IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9735 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESHBHAI GORDHANBHAI PATEL

Versus

COLLECTOR & DISTRICT MAGISTRATE

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Appearance:

MR BHARAT T RAO for Petitioner

MR SK PATEL, Learned AGP for Respondent Nos. 1 & 2

MS PJ DAVAWALA for Respondent No. 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/10/2000

C.A.V. JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his detention dated 31.7.2000 recorded by the first respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner has mainly contended here that there was supply of illegible copies of documents and, therefore, he could not submit effective representation against his detention and, therefore, the order of detention against the petitioner may be treated to be illegal. The petitioner has prayed for quashing and setting aside the said order of detention passed against him.

3. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for respondents nos. 1 and 2. Ms. P.J.Dawavala, learned Additional Standing Counsel appeared for respondent no.3 and has filed affidavit of Mr. R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi which is taken on record. I have heard learned advocates for the parties and have perused the papers.

4. Mr. B.T.Rao, learned advocate appearing on behalf of the petitioner has argued that the detenu had submitted representation and had also demanded legible copies of documents. That before the legible copies of documents could be received by the petitioner, the representation of the petitioner was disposed of and, therefore, the petitioner could not submit effective representation against his detention. It has been contended that the representation was submitted on 8.8.2000 to different authorities and the same was decided on 17.8.2000 meaning thereby that there was delay of 8 days in disposal of the said representation. It is also his case that in the said representation he had demanded certain documents from the respondents. The said representation is dated 8.8.2000 which can be gathered at Annexure-B at page-23 to the petition. Now, this representation clearly contains a request for supply of certain legible documents. It is not in dispute that the documents were supplied to him on 20.8.2000. It appears that the State Government directed the detaining authority on 11.8.2000 to supply the copies, but the the

said authority supplied the copies on 20.8.2000. Therefore, there was a delay even in supplying copies for about 9 days. In the meantime, the representation had already been disposed of by the State Government.

5. Mere direction to the detaining authority to supply the copies was not sufficient. It was a duty of the State Government to see that the copies are supplied. That the copies supplied are legible and that the legible copies are supplied promptly and in time, so that the petitioner could immediately submit second representation which could be disposed of promptly. When the representation is required to be disposed of promptly, the supply of copy is also required to be on a prompt action. Otherwise, the petitioner will have to remain in detention for indefinite period till the copies are supplied. When the delay in disposal of the said representation becomes fatal to the detention order, the delay in supply of copies equally becomes fatal to the order of detention.

6. The learned advocate for the petitioner has also relied upon a decision in the case of Ramjilal Vs. State of Tamil Nadu and Another reported in AIR 1999 SC 684 which goes to the extent of quashing the detention order when it was a case of unexplained delay of five days in considering and disposing the detenu's representation. There, the minister was out of headquarter and, there the representation could not be disposed of promptly. The Hon'ble Supreme Court observed that merely because of the absence of minister, delay was not justified. The aforesaid decision shows that even the delay of five days was found to be fatal to the detention order. Here, the delay is of about 9 days in supplying copies and that has to be treated to be fatal since the petitioner had to remain in detention for about a week for want of supply of legible copies of documents.

7. Under the circumstances, this delay has not been explained by any authority. It therefore has to be held that there was inordinate delay on the part of the respondents in supplying copies of legible documents. This delay has not been explained. Therefore, on one hand, there was inordinate delay of nearly one week in supplying copies of legible documents and on the other hand, delay has not been explained. Therefore, on this count alone, the detention order has to be quashed as the further detention of the petitioner cannot be treated to be legal.

8. Another aspect of the case is that when the

documents are required to be supplied to the petitioner then the authority has to consider as to whether this document has actually been relied upon for the purpose of passing detention order against the petitioner. Once it is found that the documents are relied upon for the said purpose, they must be supplied to the detenu. Supplying the documents which are not legible would amount to non-supply of documents relied upon for the purpose of detention. Therefore, proper course for the detaining authority is to see that the documents supplied are legible. This would enable the detenu to submit prompt representation and once the representation is prompt, the disposal may also be prompt. Therefore, the petitioner may not get technical benefit of delay in disposal of representation. Anyway, in the present case, there is inordinate delay of one week in supply of copies of documents and the said delay has not been explained by the detaining authority or by any other authority. In that view of the matter, delay has not been explained, consequently further detention of the petitioner could not be upheld. Considering the aforesaid aspects of the case and having regard to unexplained and inordinate delay on one week in supplying copies of documents, further detention has to be treated to be illegal and the petition is therefore required to be allowed and the order of detention has to be quashed and set aside.

9. In the aforesaid view of the matter, the present petition is allowed and the order of detention passed by the District Magistrate, Vadodara against the petitioner on 31.7.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)